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Attorneys and Counselors at Law

January 8, 2016

Hon. Charles R. Breyer  
United States District Court  
Northern District of California  
450 Golden Gate Avenue  
San Francisco, CA 94102

Re: *In Re: Volkswagen "Clean Diesel" Marketing, Sales Practices, and Products  
Liability Litigation*  
MDL No. 2672 CRB (JSC)

Dear Judge Breyer:

I write to request my appointment and that of my co-counsel Richard M. Frank as Co-Lead Counsel or to a position on the Steering Committee of the above-captioned litigation. Professor Frank and I jointly represent plaintiffs Barbara Bozman-Moss, Dennis Bozman-Moss and Edie Sussman (vehicle owners), in Action No. 15-cv-05021-VC, in the United States District Court, Northern District of California.

Professor Frank and I offer a unique combination of experience and expertise which, in our opinion, will contribute to the efficient and effective management of this case. We fully understand that we do not present the usual profile of attorneys carrying leadership responsibility in MDL litigation.

Beginning with Professor Frank: Richard M. Frank is a Professor of Environmental Practice at the UC Davis School of Law. He previously served as Chief Deputy Attorney General for Legal Affairs in the State of California during the administration of Attorney General Bill Lockyer. In that capacity, he directed the full range of the Department of Justice's civil and criminal legal work in the courts and on behalf of California's regulatory agencies (including the California Air Resources Board [CARB]). Following his departure from state service in 2006, Professor Frank became Executive Director of the Center for Law, Energy and the Environment at UC Berkeley School of Law. Since January 2011, Professor Frank has been a Professor of Environmental Practice and Director of the California Environmental Law and Policy Center at UC Davis School of Law. His many public service appointments as a law professor, including to

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the Board of Directors of the California High Speed Rail Authority and to an advisory body for CARB, are outlined in the accompanying curriculum vitae.

I am a Fellow of American College of Trial Lawyers and a long-time member of the American Board of Trial Advocates. I have tried dozens of cases, including the jury trial of a significant class action against a major national law firm. (*Ellis, et al. v. Les Schwab Tire Centers of Portland, Inc., et al.*, Case No. 0809-12701 in the Circuit Court for the State of Oregon, County of Multnomah.) More generally, I have represented both plaintiffs and defendants in class action litigation for over 20 years. My varied experience and appointments are set out in the accompanying curriculum vitae. While perhaps it is unlikely that any aspect of the Volkswagen litigation will proceed to trial, it is my firm belief that lawyers who know how to try cases also know best how to discover them efficiently.

I respectfully suggest that because of our backgrounds, Professor Frank and I can provide an intelligent approach to the coordination of the present civil case with the regulatory actions and the criminal proceedings that are underway.

At some point Volkswagen may well take the position that it has a finite amount of money available to redress claims of civil damages, to provide environmental remediation and to pay civil and criminal penalties. When that amount is made known, it will be important that counsel in the present case acknowledge and understand the competing interests of other interested parties and work constructively to reconcile those interests. Our combined experience in civil, criminal and regulatory law is well suited to that task. We are perhaps uniquely experienced to serve as liaison counsel between the class and the concerned governmental agencies. Should the Court wish to designate a specific position to carry out this function, we would be happy to fill it.

Abbey, Weitzenberg, Warren & Emery is a 16 attorney law firm headquartered in Santa Rosa, of which I am the senior shareholder. The firm has been in existence since 1921 and represents many of the Northbay's major institutions. We have been extremely fortunate in the plaintiffs' portion of our practice, and the firm is well-positioned to contribute to the financial burden of conducting this lawsuit. (Neither Professor Frank nor the University of California will be expected to contribute to such assessments.) The work of this case will be staffed by Professor Frank, myself and my fellow shareholders Brendan M. Kunkle and Matthew R. Lilligren, both also experienced trial lawyers (and by our respective associate attorneys).



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Among the many jurists who might speak to our credentials, we suggest the following, should the Court wish to explore further our experience and expertise:

Patrick W. Emery: 1) Hon. Gary Nadler, Assistant Presiding Judge of the Superior Court of the State of California, County of Sonoma (707-521-6725); 2) Hon. Marilyn Litzenberger, Judge of the Circuit Court of the State of Oregon, County of Multnomah (503-988-3365). (Judge Litzenberger presided over every aspect of the *Ellis* case and can attest to my ability to manage and try class actions.)

Brendan M. Kunkle: 1) Hon. Mark Tansil (Ret.), Judge of the Superior Court of the State of California, County of Sonoma (707-484-1851).

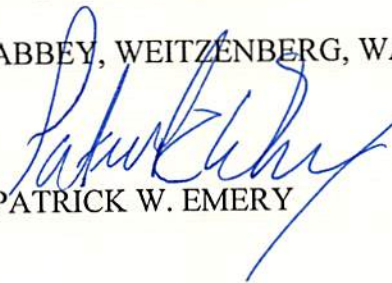
Matthew R. Lilligren: 1) Hon. Frank C. Damrell, Jr. (Ret.), Judge of the United States District Court, Eastern District of California (916-706-0555)

In addition, my firm will utilize the services, if necessary, of our contract attorney, Kimberley Reiley Clement. Ms. Clement is a former Assistant United States Attorney and served as Chief Trial Deputy for the City and County of San Francisco.

We appreciate your consideration of our somewhat unconventional application for a leadership role in this litigation.

Respectfully submitted,

ABBEY, WEITZENBERG, WARREN & EMERY, P.C.



PATRICK W. EMERY

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Enclosures